

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

GREGORY COLBURN, et al.,

Defendants.

No. 19-CR-10080-NMG

DEFENDANTS' SUPPLEMENTAL PROPOSED JURY INSTRUCTION ON VENUE

Pursuant to Fed. R.Crim. P. 30, Defendants Gamal Abdelaziz and John Wilson respectfully request that the Court give the jury instruction attached as Exhibit A. Defendants submit this instruction on venue in light of the fact that the government has failed to elicit proof of venue at trial. *See United States v. Georgiadis*, 819 F.3d 4, 10-11 (1st Cir. 2016) (jury may make venue determination); *United States v. Dziurgot*, 664 F.2d 6, 8 (1st Cir. 1981) (“[I]f the issue is raised, a defendant is entitled to have any factual question presented in connection with venue determined by the jury.”).

Dated: October 3, 2021

Respectfully submitted,

GAMAL ABDELAZIZ

By his attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically on October 3, 2021, and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing.

/s/ Joshua Sharp
Joshua Sharp

EXHIBIT A

VENUE

Finally, you must determine if the government has proven venue in the District of Massachusetts as to the Count 1 and Count 2 conspiracies. Venue refers to the location of the alleged crimes.

For you to return a verdict of guilty, the government must convince you that an “overt act” in furtherance of the conspiracy at issue took place in the District of Massachusetts.¹

An “overt act” is an act that is committed knowingly by one of the co-conspirators to accomplish some purpose of the conspiracy.²

Unlike all of the other elements that I have described, venue has to be proven only by a preponderance of the evidence. This means the government has to convince you that it is more likely than not that an overt act of each charged conspiracy took place in the District of Massachusetts.³

You must determine venue separately for Count 1 and for Count 2.⁴

If you find that the government failed to prove by a preponderance of the evidence that an overt act in furtherance of the charged conspiracy took place within the District of Massachusetts, you must find the defendants not guilty.

Remember that all of the other elements I have described must be proved beyond a reasonable doubt.⁵ It is only this element—venue—that requires proof by a “preponderance of the evidence.”

¹ Adapted from Sixth Circuit Pattern Criminal Jury Instruction 3.07.

² Adapted from *United States v. DeNunzio*, No. 1:14-CR-10284-NMG (Dkt. 513 at 153, Apr. 29, 2016).

³ Adapted from Sixth Circuit Pattern Criminal Jury Instruction 3.07.

⁴ See *United States v. Salinas*, 373 F.3d 161, 163-64 (1st Cir. 2004) (“[T]he government must prove by a preponderance of the evidence that venue is proper as to each individual count.”)

⁵ Adapted from Sixth Circuit Pattern Criminal Jury Instruction 3.07.